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14 **UNITED STATES DISTRICT COURT**  
15 **DISTRICT OF NEVADA**

16 GLEN J. LERNER, ESQ. and  
17 PAUL BUTLER,

18 Plaintiffs,

19 vs.

20 ROB W. BARE, in his capacity as Bar Counsel  
21 to the State Bar of Nevada,

22 Defendant.

Case No.: 2:06-CV-0453-JCM (PAL)

23 **OPPOSITION TO DEFENDANT STATE BAR OF NEVADA'S MOTION TO**  
24 **DISMISS/LIMITED NON-EXCLUSIVE RESPONSE TO PLAINTIFFS' MOTION FOR**  
25 **PRELIMINARY INJUNCTION**

26 Plaintiffs Glen Lerner, Esq. and Paul Butler, by and through their counsel Michael  
27 Stein, Esq. of the Law Offices of Gentile DePalma, Ltd., oppose Defendant's Motion to  
28 Dismiss because the motion is now moot. Plaintiffs filed an Amended Complaint on May 16,  
2006 (Doc. # 14) naming Rob Bare, Esq., who is Bar Counsel for The State Bar of Nevada,

1 as the Defendant in his capacity has Bar Counsel. An Acceptance of Service on behalf of  
2 Rob Bare, Esq. has been filed. (Doc. # 18).

3  
4 This Opposition is based upon the Memorandum of Points and Authorities  
5 incorporated herein.

6 Dated this 23 day of May, 2006.

7 LAW OFFICES OF GENTILE DePALMA, LTD.

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10 BY: 

11 Michael D. Stein, Esq.  
12 Nevada Bar No. 4760  
13 3960 Howard Hughes Parkway, Suite 850  
14 Las Vegas, Nevada 89109  
15 (702) 386-0066  
16 Attorney for Plaintiffs

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 The State Bar of Nevada's Motion is now moot because Plaintiff filed an Amended  
19 Complaint. (Doc. # 14). Rob Bare is now named as the Defendant in this case in his  
20 capacity as State Bar Counsel for the State Bar of Nevada. (Doc. # 14).

21 NRCP 15(a) provides, "A party may amend his pleading once as a matter of course  
22 at any time before a responsive pleading is served[.]" A Motion to Dismiss is not a pleading,  
23 but a motion. See 3 Moore's Federal Practice, § 15.11 (The term *responsive pleading* is  
24 defined by reference to Rule 7(a), which distinguishes between pleadings and motions, and  
25 provides an exclusive list of what is a pleading [.]); see also *Federal Civil Rules Handbook*  
26 405 (West 2004)(A motion filed in opposition to a pleading is not a responsive pleading  
27 within the meaning of Rule 15(a)); see e.g. *Shaver v. Operating Engineers Local 428*  
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1 *Engineers Local 428 Pension Trust Fund*, 332 F.3d 1198 (9<sup>th</sup> Cir. 2003)(motion to dismiss  
2 not responsive pleading; thus plaintiff retained "absolute right" to amend complaint).

3  
4 **III. CONCLUSION**

5 Defendant's Motion to Dismiss/Limited Non-Exclusive Response to Plaintiffs' Motion  
6 for Preliminary Injunction is rendered moot by the Plaintiff's First Amended Complaint and  
7 should therefore be denied.

8 Dated this 3<sup>rd</sup> day of May, 2006.

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10 LAW OFFICES OF GENTILE DePALMA, LTD.

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13 BY: 

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